

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARIETTA SCHEER,

Plaintiff,

-against-

COMENITY LLC d/b/a Comenity Bank,

Defendant.

Case No. 6:15-cv-6488

COMPLAINT

NOW COMES Plaintiff, Marietta Scheer ("Plaintiff"), by and through her attorneys, Krohn & Moss, Ltd., for her Complaint against Defendant, Comenity LLC d/b/a Comenity Bank ("Defendant"), alleges as follows:

Nature of the Action

1. This action is brought by Plaintiff pursuant to the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.*

Parties

2. Plaintiff is a natural person residing in Corning, New York in Steuben County.

3. Defendant is a business entity incorporated in Delaware with headquarters in Columbus, Ohio.

4. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers.

Jurisdiction and Venue

5. Jurisdiction of this court arises pursuant to 28 U.S.C. § 1331 and 47 U.S.C. § 227.

6. Venue is proper pursuant to 28 U.S.C. § 1331(b)(2) as the acts and transactions giving rise to this action occurred in this district as Plaintiff resides in this district and Defendant transacts business in this district.

Factual Allegations

7. Around October 2014, Defendant began placing calls to (607) 684-13xx, Plaintiff's cellular telephone.

8. Upon information and good faith belief, based on the frequency, number, nature and character of these calls, Defendant placed them by using an automatic telephone dialing system.

9. These calls were to attempt to collect payments for the purchase of goods and/or services.

10. These calls were for non-emergency purposes.

11. In October 2014, Plaintiff received a call from Defendant and instructed Defendant, through its employee, representative, or agent, to stop calling her.

12. Plaintiff revoked any consent, express or otherwise, for Defendant to use an automatic telephone dialing system to call her cell phone.

13. Defendant continued to use an automatic telephone dialing system to call Plaintiff's cell phone.

14. Between October 26, 2014 and March 14, 2015, Defendant used an automatic telephone dialing system to call Plaintiff's cellular telephone at least five hundred twenty (520) times.

15. Defendant called Plaintiff multiple times per day.

16. Defendant willfully and voluntarily used an automatic telephone dialing system to place these calls.

17. Defendant intended to use an automatic telephone dialing system to place these calls.

18. Defendant did not have Plaintiff's express consent to use an automatic telephone dialing system to place these calls.

CLAIM FOR RELIEF
Telephone Consumer Protection Act

19. Defendant's actions alleged *supra* constitute numerous negligent violations of the TCPA, entitling Plaintiff to an award of \$500.00 in statutory damages for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B).

20. Defendant's actions alleged *supra* constitute numerous and multiple knowing and/or willful violates of the TCPA, entitling Plaintiff to an award of \$1500.00 in statutory damages for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

WHEREFORE, Plaintiff prays that judgment be entered against Defendant for the following:

- (1) Statutory damages of \$500.00 for each and every negligent violation of the TCPA pursuant to 47 U.S.C. § (b)(3)(B);
- (2) Statutory damages of \$1500.00 for each and every knowing and/or willful violation of the TCPA pursuant to 47 U.S.C. § (b)(3)(b) and 47 U.S.C. § (b)(3)(C);
- (3) All court costs, witness fees and other fees incurred; and
- (4) Awarding such other and further relief as may be just, proper and equitable.

KROHN & MOSS, LTD.

Dated: August 14, 2015

/s/ Shireen Hormozdi
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VERIFICATION OF COMPLAINT AND CERTIFICATION

STATE OF NEW YORK

Plaintiff, MARIETTA SCHEER, states the following:

1. I am the Plaintiff in this civil proceeding.
2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this Complaint in good faith and solely for the purposes set forth in it.
6. Each and every exhibit I have provided to my attorneys which has been attached to this Complaint is a true and correct copy of the original.
7. Except for clearly indicated redactions made by my attorneys where appropriate, I have not altered, changed, modified or fabricated these exhibits, except that some of the attached exhibits may contain some of my own handwritten notations.

Pursuant to 28 U.S.C. § 1746(2), I, MARIETTA SCHEER, hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

8/10/2015
Date


MARIETTA SCHEER